THE HONOURABLE SRI JUSTICE V. ESWARAIAH

W.P. NO. 6547 of 2006

Dated: 29-01-2007

Between:-

Chintha Punnaiah s/o Kotaiah, aged 65 years, R/o Narasaraopet, Guntur District.

...

Petitioner

And

The Director of Municipal Administration, A.P. Hyderabad and 4 others.

...

Respondents.

C.C. No. 485 of 2006

Between:-

Chintha Punnaiah.

...Petitioner

And

Ch. Vijayakumar, Director of Municipal Administration, A.P. Hyderabad and 3 others.

...

Respondents.

THE HONOURABLE SRI JUSTICE V. ESWARAIAH.

W.P. No. 6547 of 2006
And
C.C. No. 485 of 2006

COMMON ORDER

Heard both the learned counsel appearing for the petitioner as well as the respondents.

It is the case of the petitioner that he was the existing contractor to collect the fee from the hawkers and the vendors selling on the road margins for the year 2005-2006 for Rs.1,95,000/-. While so, the 3rd respondent-Commissioner, Chilakaluripet Municipality, issued a notification which was published in the gazette, calling for tenders to collect the fee from the hawkers as well as the vendors on the road margin in sundry market proposing to conduct the auction on 10-3-2006 at about 11.00 AM in the office of the Commissioner, Chilakaluripet Municipality. It is stated that some contractors formed into a syndicate and did not allow others to enter into the hall to participate in the auction and the petitioner was also prevented from participating in the tenders, and therefore, he has intimated the same to the Commissioner-the 4th respondent, and the same fact was also published in 'Prabhatha Vaartha' daily newspaper dated 28-03-2006. It is stated that the

auction proposed to be conducted on 10-3-2006 was postponed to 25.3.2006, and the petitioner went there prepared with his offer of Rs. 4,50,000/-. It is stated that as the petitioner was prevented from entering the hall on 25.3.2006, he made representation to respondents 3 and 4 expressing his intention to bid for Rs. 4,50,000/-, but no action was taken. It is stated that the petitioner is ready and willing to pay the bid amount of Rs. 4,50,000/-, but the 4th respondent fixed the meeting of the council on 31.3.2006 to finalize the bid in favour of the bidder, who offered less than Rs. 4,00,000/-. Therefore, he filed the writ petition to declare the action of 4th respondent in finalizing the tenders for collection of the fee in sundry market as well as road margin hawkers, pursuant to the tender notification dated 22.2.2006, as arbitrary and contrary to public interest, and direct the 4th respondent from proceeding further till the representation of the petitioner is considered.

It is stated that the petitioner made a representation dated 25.3.2006 stating that he was prevented from the contractors, who in collusion with others, conspired to cause loss of revenue to the Municipality, and accordingly a request has been made not to issue any orders permitting the highest bidder to collect the fee.

The writ petition was filed on 31.3.2006, and this Court while admitting the writ petition passed orders in W.P.M.P.
No. 8367 of 2006 on 03-04-2006 after hearing both sides

and the said order is stated as follows:

> "Learned counsel for the petitioner submits that though the petitioner offered a bid for Rs. 4,50,000/-, he was not allowed to participate in the auction of the leasehold rights for the year 2006-2007 held on 25.03.2006, to collect the fees from the hawkers as well as the vendors of road margin in Sundry Market. But, the bid amount of Rs.1,95,000/- quoted by one Ravula Sujatha was accepted as highest bid.
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> The learned counsel further submits that the petitioner made a detailed representation to the respondents through telegram bringing to their notice the aforesaid facts and circumstances.
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> Having regard to the facts and circumstances of the case, there shall be interim stay as prayed for subject to the condition that the petitioner deposits an amount of Rs.1,00,000/- towards the earnest money deposit within three days from today for the said bid amount of Rs. 4,50,000/-.
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> It is further directed that the highest bidder, if any, offered less than Rs.4,50,000/-, he shall not be permitted to collect the fees from the hawkers as well as the vendors of road margin in Sundry Market pending further orders. However, it is open for the fourth respondent to collect the said fee either departmentally or in favour of the agents, whoever, offers highest bid amount pending further orders."

A counter has been filed stating that on 10-3-2006 seven bidders participated and out of seven bidders Smt. Ravula Sujatha offered Rs. 2,05,000/ and the same was knocked down subject to approval of the Municipal Council, and as one

Sri M.Y. Satyanarayana, resident of Narasaraopet town has offered higher amount in writing stating that he will pay Rs. 2,30,000/- over and above the knocked out bid amount, he submitted his application within 24 hours before the Commissioner duly depositing the said offer amount of Rs.2,30,000/- by way of demand draft before finalization of auction by the council. The council has decided to conduct re-auction and accordingly

re-auction notice was issued on 21.3.2006 fixing the date for conducting of re-auction on 25.3.2006. Two constables were also posted to maintain law and order and accordingly re-auction was conducted on 25.3.2006 in which 13 bidders have participated and 5th respondent has offered Rs. 3,83,000/- and accordingly the highest bidder was knocked down in favour of 5th respondent subject to the approval of the Municipal Council and the matter was placed before the Municipal Council for its decision on 31.3.2006 and the Municipal Council in its Resolution No. 364, dated 31.3.2006 has resolved to accept highest bid of 5th respondent. Accordingly, the proceedings have been issued on 31.3.2006 itself with a condition to deposit 3 months advance kisthi permitting her to collect leasehold rights of sundry market vide proceedings ROC No. 29/6/A1, dated 31.3.2006. It is stated that the petitioner has sent his objection petition offering to pay a sum of Rs. 4,50,000/- through courier service No. 20024963 which was received by the 4th respondent's office on 31.3.2006. As per the condition No.6 of the said notification, the petitioner should have

submitted an application within 24 hours after public auction is over, but the application of the petitioner received six days after the acceptance of the highest bid and on the date of approving the highest bid by the Municipal Council.

The petitioner filed Contempt Case No. 485 of 2006 contending that the respondents have willfully and deliberately disobeyed the said interim orders of this Court dated 3-4-2006. It is stated that no doubt as per the interim orders of this Court dated 3-4-2006 this Court granted stay of all further proceedings including the finalization of the tender for collection of fee from the hawkers as well as the vendors on the road margin, pursuant to the tender notification with a direction to the respondents to consider the representation of the petitioner forthwith. It is stated that as there is a specific direction not to permit to collect the free from the hawkers as well as the vendors on the road margin in sundry market if the highest bidder offered less than Rs.4,50,000/- and it was specifically directed to collect the fees from the hawkers as well as the vendors on road margin in sundry market either departmentally or by agents whoever offers highest bid amount, the 4th respondent illegally permitted the 5th respondent to collect the same.

I am of the opinion that the interim orders of this Court were issued only on 3-4-2006 and by that time the Municipal Council has already approved the highest bid

of 5th respondent on 31.3.2006 and therefore the question of issuing any further proceedings does not arise and accordingly it cannot be said that the 4th respondent has willfully and deliberately violated the orders of this Court. As the action proceedings were already over, which was approved by the Municipal Council on 31.3.2006 itself, as per the terms and conditions of the auction, if a person after conduct of the auction, wants to offer the highest bid, then such person has to deposit the highest bid amount offered by him within 24 hours before the Commissioner, Municipality. But in the instant case no such offer has been made and the petitioner has not deposited
Rs. 4,50,000/- seeking re-auction of the same, and therefore, I am of the opinion that the petitioner is not entitled to seek re-auction of the same.

It is stated that pursuant to the interim direction, the petitioner has deposited a sum of Rs. 1,00,000/-. Hence, the 4th respondent is directed to refund the said amount of Rs. 1,00,000/- along with interest, if any, accrued thereon in favour of the petitioner forthwith.

In view of the aforesaid facts and circumstances, I am of the opinion that the petitioner is not entitled to any relief.

Accordingly, the writ petition is dismissed. No order as to costs.

C.C. No. 485 of 2006

Though the 4th respondent could have taken steps taking advantage of the orders of this Court to collect a

sum of Rs.4,50,000/- either from the petitioner or ought to have collected the same departmentally, but in view of the dismissal of the said writ petition, a lenient view has to be taken against the 4th respondent, though there is something to show that the 4th respondent has not taken any steps to implement the orders.

With the said observation, the contempt case is dismissed. No order as to costs.

V.

ESWARAIAH, J
29th January, 2007
vp